

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2649

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

FREDERICK BOWERS,

PETITIONER-APPELLANT,

V.

DAVID H. SCHWARZ,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County:
JOSEPH E. SCHULTZ, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Frederick Bowers appeals from an order that affirms a forfeiture of good time imposed during his parole revocation proceeding. The issues are whether the Department of Corrections (DOC) imposed an excessive forfeiture of time and whether it afforded Bowers due process. We

affirm on both issues. Although Bowers also contends that the DOC imposed unlawful conditions on his future parole, he did not raise this issue in the trial court and we therefore decline to address it. *See Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980).

¶2 In February 1993, after serving over ten years in prison on several felony convictions, Bowers was released on mandatory parole eleven years and three months short of his maximum discharge date. Three years, seven months, and one day later he violated parole and was subsequently revoked. Upon revocation the DOC determined that Bowers should forfeit his entire accumulation of eleven years and three months' good time.

¶3 Bowers filed a habeas corpus petition challenging the forfeiture determination. The trial court affirmed it, resulting in this appeal. Our review is de novo. *See State v. Robertson*, 174 Wis. 2d 36, 41, 496 N.W.2d 221 (Ct. App. 1993).

¶4 Bowers first contends that the DOC failed to provide him with a due process hearing on the forfeiture issue. The record contradicts that assertion. WISCONSIN ADMIN. CODE §§ DOC 331.04 and 331.13 allow for combined hearings on parole revocation and forfeiture, and that is what occurred here. Bowers received two months' notice that his good time forfeiture would be addressed at the parole revocation hearing. He appeared at that hearing with counsel and was provided the opportunity to testify, cross-examine witnesses, and present documentary evidence. Due process required nothing more.

¶5 Bowers next contends that the maximum forfeiture the DOC could impose on him was eleven years and three months, less the three years, seven months and one day he served on parole. We disagree. The statute applicable to

the DOC's calculation, based on Bowers' conviction dates, provided that the DOC "may upon proper notice and hearing forfeit all or part of the good time previously earned under this chapter, for violation of the conditions of parole" WIS. STAT. § 53.11(2a) (1981-82). "[A]ll ... good time" subject to forfeiture under § 53.11 included the so-called "street time," during which the offender had served time on parole. *See State ex rel. Hauser v. Carballo*, 82 Wis. 2d 51, 68-70, 261 N.W.2d 133 (1978). That ends the matter.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

